

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 4:19 CR 587 CDP
)
DARRYL LEWIS,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on Defendant Darryl Lewis's Motion to Dismiss Indictment [ECF No. 20]. Pursuant to 28 U.S.C. § 636(b), pretrial motions were referred to United States Magistrate Nannette A. Baker. Because there were no contested factual issues, Judge Baker did not hold a hearing on the motion to dismiss, but issued her recommendations based on the briefs provided by the parties. After briefing and supplemental briefing, she recommended that the motion to dismiss be denied. No objections to her recommendations were filed and the deadline for doing so has passed.

As no objections were filed, I will adopt and sustain the Report and Recommendations filed by Judge Baker. I have independently reviewed the motions and the law and agree with Judge Baker's recommendations. The indictment sufficiently alleges the crimes, as the government is not required to

specifically identify the firearm or to specify the type of firearm in the indictment. And the time for challenging the sufficiency of the evidence has not yet arrived; whether the government can prove its case is an issue for trial; a pretrial motion to dismiss is not an appropriate way to challenge the sufficiency of the evidence.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge [33] is **SUSTAINED, ADOPTED, and INCORPORATED** herein, and Defendant Darryl Lewis's Motion to Dismiss Indictment [20] is **DENIED**.

As set out in the Order issued on January 15, 2020 this matter remains set for **jury trial on Monday, March 9, 2020 at 8:30 a.m.** and a **final pretrial hearing** will be held on **Tuesday, March 3, 2020 at 11:30 a.m.** in Courtroom 14-South. The parties will be expected to discuss the length of the trial and any evidentiary or other issues that may arise during trial, and to make a record of any plea offers that may have been made by the government and rejected by defendant as discussed in *Missouri v. Frye*, 566 U.S. 133, 145-47 (2012).



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 4th day of February, 2020.